IN THE COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 135 OF 2006

Laxman Govind Awate ...Petitioners

vs.

Bapu Dattatray Murar and Ors. ...Respondents

Priyal G.Sarda for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

DATE ; 23RD FEBRUARY, 2007.

P.C :-

. Rule. Respondents-Original Plaintiffs absent though served. Since the Notice indicates that the Petition would be heard finally at this stage, heard forthwith.

1. This Writ Petition is directed against the order passed by the Trial Court below Exhibit 7 in Special

Civil Suit No. 236 of 2004. By the order delivered on 20.10.2005, the application Exhibit 7 was rejected and the Written Statement filed by the Petitioner Original Defendant has not been taken on record.

2. The grievance of the petitioner is that he is the Original Defendant No.1 against whom the above Special Civil Suit has been filed by Respondent Nos.1 and 2 who are the Original Plaintiffs. The relief is cancellation of sale deed dated 24.3.2004. After narrating the nature of dispute and the controversy involved in the suit, it is contended by the Petitioner, that upon the receipt of writ of summons, he appeared before the Trial Court on 3.1.2005. He filed his Written Statement on 6.4.2005. The Written Statement ought to have been filed according to the Respondent Nos.1 and 2 Original Plaintiffs on 3.4.2005. In other words, the period of 90 days stipulated by the Code of Civil Procedure as amended in 2002 expires on 3.4.2005. The Written Statement was thus delayed and could not be taken on record.

3. The Petitioner filed an application (Exhibit 7)

for condonation of three days delay in filing the Written Statement. That Application is rejected without assigning any reasons and by a one line cryptic order.

4. When the Writ Petition was placed before this court on 19.1.2006 this Court directed issuance of notice and granted ad-interim order in terms of prayer clause (c) of the petition. In other words, the trial was stayed.

5. None have appeared for the respondents although they are served. The allegations as also the averments in the Writ Petition have not been controverted. Even otherwise, I find that the delay of three days is not such as is incapable of being condoned. More so, when the relevant provisions are not held to be mandatory. In such circumstances, the Trial court should have condoned the delay of three days and taken the Written Statement on record. The impugned order is therefore patently erroneous and illegal and deserves to be quashed and set aside.

6. Rule is therefore made absolute in terms of prayer Clause (b). The impugned order stands set aside. The Written Statement of the Petitioner is directed to be taken on record. There will be no order as to costs.

7. It is clarified that the Trial Court after taking the Written Statement on record, should proceed with the trial of the suit and dispose off the same on merits and in accordance with law.

sd/-

(S.C.DHARMADHIKARI, J)